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REMARKS

A Request for Continued Examination is concurrently filed herewith.

Please enter the previously unentered Amendment B and, subsequently enter the additional amendments herein.

Responding to the Examiner's "new matter" concerns of the Advisory Action, it is submitted that the phraseology of concern namely "the source and the sensor are configured to project a radiant energy beam on a path" as in amended claim 26, are in fact fully supported by the figures and text of the present specification. In this regard, the Examiner's attention is directed to Figs. 4D and 4E wherein an embodiment of the invention is illustrated with both the source and the sensor carried fixed relative to one another in a common housing. It is thus requested that the "new matter" objection raised in the Advisory Action be withdrawn.

Further, the Examiner seems to be treating calibration, and calibration factors and the like as being the same as testing, since in the Advisory Action, the Examiner makes the following statement:

"said calibration of the light valve based upon the alignment variables is considered to correspond to a beam alignment test"; and

"this calibration is considered to correspond to a beam alignment test".

In fact, calibration and testing are quite different as is made clear by definitions from the American Heritage College Dictionary, copy attached, relative to these two words. For example, on page 199 thereof, attached, calibrate is defined as:

to check, adjust, or determine the graduations of (a quantitative measuring instrument) ... To correct; adjust.

Unlike the above, the same dictionary defines "test" as:

A procedure for critical evaluation; a means of determining the presence, quality or truth of something ... a basis for evaluation or judgement".

It is submitted that the two definitions quoted above, bring out the substantial difference between the concept of calibrate or calibration and testing. Where the rejection is based on anticipation, as it is here, for example, p. 26-29, 30-32, 42 and 43 as being anticipated by Schwartz, and 26-28, 30-32 as being anticipated by Graham, the law of anticipation must be applied when trying to make this determination. The law of anticipation is quite explicit. Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art document, or embodied in a single prior art device or practice. For example, in this regard, see *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopedics Inc.*, 976 F.2d 1559, 24 USPQ 2d 1321, 1326 (Fed. Circ. 1992).

The previous Amendment B explained in detail why the rejected claims are not anticipated by either Schwartz and Graham. From the above noted comments from Page 2 of the Advisory Action, it is quite clear that the Examiner recognizes that the calibration process of Schwartz and the calibration process of Graham are not the same as the pending claims. To make up for this difference, the Examiner has resorted to above quoted wording namely:

"said calibration of the light valve based upon the alignment variables is considered to correspond to a beam alignment test (relative to Schwartz); and

"this calibration is considered to correspond to a beam alignment test". (relative to Graham)

That phraseology is not consistent with the requirements for a proper anticipation rejection. It is again submitted that the various claims, such as 26-32, 42 and 43 are not anticipated by Schwartz. Similarly, claims 26-28 and 30-32 are not anticipated by Graham.

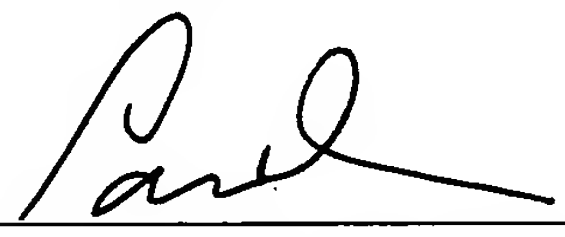
For the above reasons, as well as the reasons previously presented in Amendment B, the claims are neither anticipated nor made obvious by the cited prior art.

Relative to the Examiner's clarity objection in connection with "a beam alignment test", clearly the Examiner understands what is meant by the phrase. One of skill would also understand, by reading the specification in conjunction with the figures. That is all that is required under the Patent Statute and the MPEP. It is requested that this objection be withdrawn.

Allowance of the application is hereby respectfully requested.

Respectfully submitted,

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THE AMERICAN HERITAGE[®] COLLEGE DICTIONARY

THIRD EDITION

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Stress marks:
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 dictionary (dīk'shə-nēr'ē)

vocal or instrumental part, within which most of the tones lie. [Ital. < Lat. *textūra*, web, structure. See TEXTURE.]

test¹ (tĕst) *n.* 1. A procedure for critical evaluation; a means of determining the presence, quality, or truth of something; a trial. 2. A series of questions, problems, or physical responses designed to determine knowledge, intelligence, or ability. 3. A basis for evaluation or judgment. 4. *Chem.* a. A physical or chemical change by which a substance may be detected or its properties ascertained. b. A reagent used to cause or promote such a change. c. A positive result obtained. 5. A cupel. — *v.* **test·ed, test·ing, tests.** — *tr.* 1. To subject to a test; try. 2.a. To determine the presence or properties of (a substance). b. To assay (metal) in a cupel. — *intr.* 1. To undergo a test. 2. To administer a test. 3. To achieve a score or rating on tests. 4. To exhibit a given characteristic when subjected to a test. [ME, cupel < OFr., pot < Lat. *testū, testum*.] — **test' a·bil' i·ty** *n.* — **test' a·ble** *adj.*

test² (tĕst) *n.* A hard external covering, as that of certain amoebas, dinoflagellates, and sea urchins. [Lat. *testa*, shell.]

Test. *abbr.* Bible. Testament.

tes·ta (tĕs'tā) *n., pl. -tae* (-tĕ'). The often thick or hard outer coat of a seed. [Lat., shell.]

tes·ta·cean (tĕ-stā'shən) *n.* Any of various rhizopods of the order Testacea, characterized by the presence of a shell. [< NLat. *Testācea*; order name < Lat., neut. pl. of *testāceus*, covered with a shell < *testa*, shell.] — **tes·ta'cean** *adj.*

tes·ta·ceous (tĕ-stā'shəs) *adj.* 1. *Biol.* a. Having a hard shell or shell-like outer covering. b. Composed of a shell or shell-like material. 2. *Color.* Having the reddish-brown or brownish-yellow hue of bricks. [< Lat. *testāceus* < *testa*, shell.]

tes·ta·cy (tĕs'tā-sĕ) *n.* Law. The condition of being testate.

tes·ta·ment (tĕs'tā-mənt) *n.* 1. Something that serves as tangible proof. 2. A statement of belief; a credo. 3. Law. A written document providing for the disposition of a person's property after death; a will. 4. Testament. Bible. Either of the two main divisions of the Christian Bible. 5. Archaic. A covenant between human beings and God. [ME, a will < Lat. *testāmentum* < *testārī*, to make a will < *testis*, witness. See *trei*·*.] — **tes'ta·men'tar'y** (-mĕn'tā-rĕ, -mĕn'trĕ) *adj.*

tes·tate (tĕs'tāt') *adj.* Law. Having made a legally valid will before death. [ME < Lat. *testātus*, p.part. of *testārī*, to make one's will. See TESTAMENT.]

tes·ta·tor (tĕs'tā'tər, tĕ-stā'tər) *n.* Law. One who has made a legally valid will before death. [ME *testatour* < AN < Lat. *testātor* < *testārī*, to make one's will. See TESTAMENT.]

tes·ta·trix (tĕ-stā'trĭks) *n., pl. -tri·ces* (-trĭ-sĕz'). Law. A woman who has made a legally valid will before death. [Lat., fem. of *testātor*, testator. See TESTATOR.]

test case *n.* Law. A legal action whose outcome is likely to set a precedent or test the constitutionality of a statute.

test·cross (tĕst/'krōs', -krōs') *Genet. n.* A cross between an individual exhibiting the dominant phenotype of a trait and an individual that is homozygous recessive for that trait in order to determine the genotype of the dominant individual. — **test'cross'** *v.*

test·drive (tĕst/'drĭv') *tr.v. -drove* (-drōv'), **-driv·en** (-drĭv'ən), **-driv·ing, -drives.** To drive (a motor vehicle) to evaluate it.

test·er¹ (tĕs'tər) *n.* One that tests: a battery tester.

tes·ter² (tĕs'tər, tĕ'star) *n.* A canopy, as over a bed or pulpit. [ME < Med.Lat. *testrum* < LLat. *testa*; skull < Lat., shell.]

tes·ter³ (tĕs'tər) *n.* See *teston* 2. [Alteration of TESTON.]

tes·ti·cle (tĕs'ti-kəl) *n.* A testis, esp. within a scrotum. [ME *testicula* < Lat. *testiculus*, dim. of *testis*, testis. See TESTIS.]

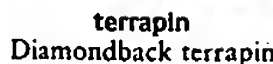
tes·tic·u·lar (tĕ-stĭk'yə-lər) *adj.* Of or relating to a testis.

tes·tic·u·late (tĕ-stĭk'yə-lĭt) *adj.* 1. Having the shape of a testicle; ovoid. 2. Bot. Having two oblong tubes, as some orchids. 3. Testicular.

tes·ti·fy (tĕs'tā-fi') *v. -fled, -fy·ing, -fies.* — *intr.* 1. To make a declaration of truth or fact under oath; submit testimony. 2. To express or declare a strong belief, esp. to make a declaration of faith. 3. To make a statement based on personal knowledge in support of an asserted fact; bear witness. 4. To serve as evidence. — *tr.* 1. To declare publicly; make known. 2. To state or affirm under oath. 3. To bear witness to; provide evidence for. [ME *testifyen* < Lat. *testificāri*: *testis*, witness; see *trei*·* + *-ficāri, -fy*.] — **tes'ti·fi·ca'tion** (-fi-kā'shən) *n.* → **tes'ti·fi'er** *n.*

tes·ti·mo·ni·al (tĕs'tā-mō'nĕ-əl) *n.* 1. A statement in support of a particular truth, fact, or claim. 2. A written affirmation of another's character or worth; a personal recommendation. 3. Something given in appreciation of a person's service or achievement; a tribute. — *adj.* Relating to or constituting a testimony or testimonial: *testimonial statements*. [ME < OFr., of evidence < LLat. *testimōnialis* < Lat. *testimōnium*, testimony. See TESTIMONY.]

tes·ti·mo·ny (tĕs'tā-mō'nĕ) *n., pl. -nies.* 1.a. A declaration by a witness under oath, as that given before a court. b. All such declarations, spoken or written, offered in a legal case or deliberative hearing. 2. Evidence in support of a fact or an assertion; proof. 3. A public declaration regarding a religious experience. 4.a. The stone tablets inscribed with the Law of



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ō paw	item

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